

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Ashen
32086

B-219805.2

FILE:

DATE: August 27, 1985

MATTER OF:

Orthopedic Systems Inc.--Request for
Reconsideration

DIGEST:

Protest which merely anticipates possible future agency action is speculative and will not be considered by GAO.

Orthopedic Systems Inc. (Orthopedic) requests reconsideration of our August 6, 1985, dismissal, as untimely, of its protest against the failure of the Veterans Administration (VA) to accept its offers under solicitations for multiple-award Federal Supply Schedule (FSS) contracts to supply medical equipment and supplies.

We deny the request for reconsideration.

In its initial protest, Orthopedic protested against any award under solicitation No. M3-Q18-85, indicating that "[o]ur reason for this protest is that we have submitted bids on this equipment in the past and were not awarded the contract." In particular, Orthopedic alleged that its offer under the prior solicitation for multiple-award FSS contracts to supply medical equipment and supplies, solicitation No. M3-Q19-84, had been unfairly rejected. Orthopedic indicated that it had been notified on July 6, 1984, that its offer under the prior solicitation was unsatisfactory because Orthopedic had offered the government a lesser discount than it offered its most favored customers. In response, by letter of July 6, 1984, Orthopedic explained to VA that a simple comparison of the discounts was misleading because it failed to take into account the firm's other concessions which it believed would result in the government receiving more favorable terms than those which the firm accorded its other customers. Nevertheless, by letter of July 11, 1984, VA rejected Orthopedic's offer, indicating that the discount offered by the firm was not advantageous to the government.

Our Bid Protest Regulations, 4 C.F.R. § 21.2 (1985), require that protests not based upon alleged improprieties in a solicitation be filed not later than 10 working days after the basis of protest is known or should have been

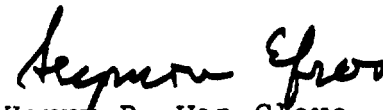
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known, whichever is earlier. Orthopedic, in its initial protest, gave no indication that its offer under solicitation No. M3-Q18-85 had been rejected. Instead, nearly all of its protest concerned the allegedly unfair rejection of its offer under the prior year's solicitation No. M3-Q19-84. Since Orthopedic knew the basis for its allegation regarding that solicitation at least as early as July 11, 1984, but did not file its protest with our Office until August 5, 1985, over 1 year later, our Office dismissed its protest as untimely.

In its request for reconsideration, Orthopedic points out that it still has not been notified whether its offer under solicitation No. M3-Q18-85 has been accepted or rejected by VA. Accordingly, it denies that its protest regarding that solicitation could be untimely under 4 C.F.R. § 21.2.

We agree that Orthopedic's protest as it relates to the current solicitation does not appear to be untimely under section 21.2. We note, however, that we have previously held that a protest which, as here, merely anticipates agency action is speculative and will not be considered by this Office. See Triple P Services, Inc., B-217320, Jan. 2, 1985, 85-1 C.P.D. ¶ 11. Accordingly, Orthopedic's speculation that its offer may be rejected by the VA because of the discount offered by the firm provides our Office no basis upon which to consider the protest at this time.

The request for reconsideration is denied.

for 
Harry R. Van Cleve
General Counsel